

GAHC010126152014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4132/2014

ASWINI MAHANTA and 4 ORS.

S/O- MAHESWAR MAHANTA, VILL. and P.O.- ARARA, P.S. and DIST.-
NALBARI, ASSAM, PIN- 781334.

2: GAUTAM DAS

S/O- JITEN DAS

VILL.- RAJAKHAT

BANEKUCHI

P.O.- KHARSITHA

P.S. and DIST.- NALBARI

ASSAM

PIN- 781370.

3: ABDUL HANNAN

S/O- LT. AJMAT ALI

VILL.- FOKIRTOALA

P.O. and P.S.- HAJO

DIST.- KAMRUP

ASSAM

PIN- 781102.

4: MUNINDRA KALITA

S/O- LT. DEBI RAM KALITA

VILL. and P.O.- JANIGOG

P.S. and DIST.- NALBARI

ASSAM

PIN- 781335.

5: KUMUD BEZBARUAH

S/O- LT. RAJENDRA BEZBARUAH

VILL.- SARIAHTALI

P.O.- MILANPUR

P.S. and DIST.- NALBARI

ASSAM

PIN- 781337

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
FOREST DEPTT., DISPUR, GHY- 6.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM
REHABARI
GHY- 8.

3:THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF FORESTS
SOCIAL FORESTRY
ASSAM
BASISTHA
GHY- 29.

4:THE DIVISIONAL FOREST OFFICER
SOCIAL FORESTRY DIVISION
NALBARI
P.O. and DIST.- NALBARI
ASSAM
PIN- 781335

Advocate for the Petitioner : MRS.B D SARMA

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 02.04.2024

Heard Mr. U. K. Das, learned counsel for the petitioners. Also heard Ms. D. Das, Barman, learned counsel appearing for the respondents.

2. The petitioners, by way of instituting the present proceeding have raised a grievance with regard to the exclusion of their names from the final list of left out casual workers working in the Forest Department prior to 01.04.1993. The petitioners have also challenged the said final list as prepared by the Principal Chief Conservator of Forests and Head of Forest Force, Assam, in respect of the Social Forestry Division, Nalbari.

3. As projected in the writ petition, the petitioners were engaged at different point of time in the year 1991 and 1992 as casual workers in the establishment of the respondent no. 4. It is the contention of the petitioners that since the date of their initial engagement they were serving in the establishment of the respondent no. 4 for varying periods. The petitioners no. 1, 3, 4 & 5 contend that they were so engaged in the establishment of the respondent no. 4 till around the year 2000 whereas, the petitioner no. 2 contends that he had continuously served in the establishment of the respondent no. 2 till around the year 1997. It is the contention of the petitioners that thereafter they were engaged from time to time with the works of casual nature.

It is also submitted that the decision to regularize the services of the casual workers, similarly situated like that of the petitioner having been taken by the Government, a process was initiated for preparing a list of casual workers engaged prior to 01.04.1993 in the Forest Department. Accordingly, it is the contention of the petitioners that the respondent no. 4 after examining all required aspects of the matter prepared a list of casual workers engaged prior to 01.04.1993 in the year 2010 and therein, included the names of the petitioner no. 1, 2, 3 & 4. Thereafter, a second list was prepared in the year 2011 wherein, the name of the petitioner no. 5 herein, figures. The said lists were thereafter forwarded to the office of the Principal Chief Conservator of Forests and Head of Forest Force, Assam for consideration of the cases of the persons so included for regularization of their services. However, in the final list as prepared for the casual workers working in various establishments under the respondent no. 2 as published on 10.06.2014, the names of the petitioners herein were excluded. The petitioners on coming to learn of their names being excluded from the final list of casual workers prepared by the Principal Chief Conservator of Forests and Head of Forest Force, Assam, submitted a representation dated 12.07.2014 before the said authority praying for the inclusion of their names in the said list.

It is the contention of the petitioners that although their names were forwarded by the respondent no. 4, no reasons have been assigned for the exclusion of their names in the final list as prepared by the respondent no. 2 herein. The petitioners submitted that persons similarly situated like the petitioners and having length of service on casual nature, similar to the one as rendered by the petitioners herein were placed in the final list but, the

names of the petitioners were so excluded without there being any reasons assigned for the same. Being aggrieved, the petitioners have instituted the present proceedings before this Court making a challenge to the said list and praying for a direction for preparation of a fresh list by including their names therein.

4. The respondents no. 2, 3 & 4 have filed an affidavit in the matter and have contended therein that on examination of the final list, the names of the petitioners do not find mention therein. It is stated that the casual workers are engaged by the Field Officers from time to time for execution of different schemes as sanctioned by the authorities on daily wage basis. It was further admitted that the ad-hoc list as prepared by the respondent no. 4 contained the names of the petitioner. The respondents no. 2, 3 & 4 have contended that the names of the petitioners were excluded from the final list in view of the prescription made by the Finance Department vide the O.M. dated 27.06.2013 and the petitioners not having worked as casual workers continuously against a sanctioned post, the cases of the petitioners were not included in the final list of casual workers as prepared by the respondent no. 2.

5. The issue as arising in the present proceeding would require a determination of the factual particulars pertaining to the services rendered by the petitioners in the establishment of the respondent no. 4 with a further determination as to whether the persons included in the final list of casual workers for absorption as fixed pay workers are similarly situated like that of the petitioners. In absence of any material being placed on record by either of the parties, facilitating a determination of the said aspects by this Court,

this Court is not in a position to adjudicate upon the said issue.

6. The affidavit filed by the respondents no. 2, 3 & 4, reflects that the cases of the petitioners were not considered in view of the fact that they were not in continuous service as casual workers in the establishment of the respondent no. 4 and they were not holding any sanctioned vacant post. In this connection, a reference is to be made in the case of *State of Assam Vs Upen Das*, reported in (2017) 4 Gau LR 493, wherein, the Division Bench of this Court while considering the cases of left out Muster Roll, Work Charged and other similarly situated persons who were not regularized in their services in terms of the exercise as undertaken in the year 2005, noticing the decision of the State Government not to terminate the services of such Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences, proceeded to dispose of the said writ appeal by recording the following directions:-

“22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work

Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.

23. For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, Work Charged workers and Casual workers are not entitled for regularization of their services with consequential benefits, such as, pension, etc. We, accordingly, subject to our direction in paragraph 22 of the judgment, allow the appeal and set aside the impugned judgment and order dated 20.12.2013 passed by the Learned Single Judge."

7. In view of the said position and there being no clarity as to the services rendered by the petitioners herein and also the basis for preparation for a final list of casual workers by the respondent no. 2, which is under challenge in the present proceedings, the writ petitioners are hereby required to approach the respondent no. 2 by way of individual representations disclosing therein their respective service particulars along with the requisite certificates as issued by the departmental authorities certifying their periods of engagement.

8. The respondent no. 2 on receipt of such individual representations from the petitioners herein shall cause the same to be verified from the contemporaneous record maintained in the department, more particularly, in the establishment of the respondent no. 4 and thereafter, come to a conclusion as to whether the cases of the petitioners would now stand covered in terms of the decision rendered by this Court in the case of *Upen Das (supra)*.

9. In the event, it is found that the case of the petitioners are also covered by the decision of this Court in the case of *Upen Das (supra)*, the respondent

no. 2 shall take appropriate steps for extension of the benefit conferred by this Court in the case of *Upen Das (supra)* with effect from the date, similar benefits were extended to the persons so covered by the said judgment.

10. In the event, it is found that the cases of the petitioners are not liable to be considered in terms of the directions as contained in the case of *Upen Das (supra)*, the respondent no. 2 shall issue a speaking order to each of the petitioner herein recording the reasons as to why the benefit as contained in the case of *Upen Das (supra)*, is not to be extended to the petitioners herein.

11. The above exercise shall be initiated and completed by the respondent no. 2 within a period of 3(three) months from the date of receipt of such individual representations from the petitioners along with a certified copy of this order.

12. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant